IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.02.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL No.3883 of 2004

A. Sudhakar .. Appellant/Petitioner

vs.

1.The Tamil Nadu Electricity Board
rep. By the Chairman
Anna Salai, Chennai 600 002.

2.The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
Chennai 600 002.

3.The Superintending Officer
(Purchase & Administration)
E.T.P.S. Chennai 600 057. .. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of His Lordship Mr. Justice R. Balasubramanian made in W.P.No.33977 of 2003 dated 24.11.2003 certiorarified Mandamus, calling for the enire records made in Memo. No.099579-R3-1/87-1 (Admn Br) dated 5.9.87 on the file of the Ist Respondent and consequential order in Lr. No.SE/P&A/ ETPS/Admn-III/A2/R-17282/2002 dated 17/7/2002 passed by the 3rd respondent and quash the same and direct the respondents to provide suitable appointment to the petitioner on Compassionate ground.

For appellant : Mr. V. Prakash, Sr. Counsel
for Mr. S.N. Ravichandran

For respondents: Mr. S. Vaidyanathan

JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 24.11.2003 made in W.P.No.33977 of 2003, the writ petitioner has filed the above writ appeal.

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2. For convenience, we shall refer the parties as arrayed before

the learned single Judge.

3. According to the petitioner, his natural father is one Arumugam (who is no more); and his father's brother C. Balan, who was employed in the Ennore Thermal Power Station as a Fitter Grade-I, adopted him (petitioner) in the year 1984. The said Balan nominated the petitioner to receive his retirement benefits and the name of the petitioner was recorded in his Service Register in the year 1984 itself. The adoption was genuine and true and acted upon by the parties. After the adoption, the petitioner became the son of said Balan. After his adoption, his adopted mother Alagathammal passed away on 19.05.1986; his natural father died on 24.01.1990; and his adopted father C. Balan was also suddenly passed away on 03.09.1990. His natural mother, who is not conversant with the legal formalities, made a representation on 09.06.1997 to the Tamil Nadu Electricity Board for family pension and for suitable employment to him on compassionate ground, since at that time the petitioner was a minor. The request for compassionate employment was rejected by the Board by its order dated 17.07.2002. Questioning the same, the petitioner filed the above writ petition. The learned single Judge, after finding that there is no ground to consider the case of the petitioner for appointment on compassionate ground, dismissed his writ petition; hence, the present writ appeal.

4. Heard Mr. V. Prakash, learned senior counsel for the appellant and Mr. S. Vaidhyanathan, learned counsel for the Tamil Nadu Electricity Board.

5. The only point for consideration in this appeal is, whether the respondents are justified in rejecting the claim of the petitioner for employment on compassionate ground?

6. It is seen from the impugned proceedings that the request of the petitioner for employment on compassionate ground was rejected on two grounds, viz., (i) delay; and (ii) on the ground that petitioner being the adopted son, is not eligible for compassionate appointment. In so far as the first ground delay, it is not in dispute that the petitioner's adopted father passed away on 03.09.1990, and at that time, admittedly, the petitioner was a minor. Petitioner's adopted mother died on 19.05.1986; and his natural father was also died on 24.01.1990. We have already referred to the fact that the only heir, viz., his natural mother was not conversant with the legal formalities; and she made representation only on 09.06.1997, for family pension and suitable employment on compassionate ground. It is true that as per the proceedings of the Board in Permanent B.P.Ms.(FB) No.46 (Administration Branch dated 13.10.1995, an application for employment assistance under the Scheme should be submitted within three years from the date of death of the person concerned. Relying on the said proceedings, the Superintending Engineer, Ennore Thermal Power Station, rejected the claim of the petitioner for employment on compassionate ground.

7. It is brought to our notice that based on the representations from the Trade Unions and dependents of the deceased employees of the Board requesting for reconsideration of the earlier order, the matter has been re-examined and the following order was passed by the Board in

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its proceeding in (Per.)BP(FB)No.3 Administrative Branch dated 09.01.2007.

> " 4. Accordingly, the Board hereby to pass the following orders.
> i) In respect of Board employee who died prior to 13.10.1995, the condition that they should apply within 3 years need not be applied, and they may be permitted to apply without insisting on any time limit.
> ii) Already rejected cases in view of the above reason may be reopened and considered within a period of one year.
> iii) The Board also directs that the reopened past cases be examined only on merit and each case placed before the Board for approval.
> 5. The Superintending Engineers will circulate the B.P. Up to the level of section offices and take expeditious action on pending claim, if any, if there are covered under the orders issued in para 4. "

8. It is not in dispute that in view of the above said proceedings of the Board, the limitation viz., making an application within three years need not be applied. In other words, the time limit for making application for employment under compassionate ground has been taken away by the Board. In fact, even the rejected cases are to be reopened and considered within a period of one year. In view of the same, we are of the view that the rejection of the petitioner's claim on the ground of delay cannot be sustained.

9. The second ground relates to the fact that the petitioner is a adopted son, who is not eligible for employment under compassionate ground. Mr. V. Prakash, learned senior counsel appearing for the petitioner has brought to our notice that the Government of Tamil Nadu in G.O.Ms.No.70 Labour and Employment Department dated 02.07.1998, passed necessary amendment incorporating that adopted son is also eligible for employment on compassionate ground. Though there is no corresponding Board's proceedings enabling the adopted son to apply for employment under compassionate ground in Tamil Nadu Electricity Board, in view of the fact that various Government Orders of the Government of Tamil Nadu are being applied and followed by the Tamil Nadu Electricity Board, we are of the view that the request of the petitioner cannot be rejected on this ground. Employment assistance on compassionate ground is provided with a view to give immediate relief to the deceased Government servant after taking into account the indigent circumstances of the family prevailing at the time of death of the Government servant. If employment assistance is provided to a person adopted after the death of the Government servant, it would only encourage to circumvent the orders governing the scheme and derive unintended benefits under the Scheme. G.O.Ms.No.2899 Labour and Employment Department dated 23.12.1988, makes it clear that legally adopted son/unmarried adopted daughter of the Government servant is eligible for compassionate appointment only if the adoption was made and registered by the deceased

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Government servant during his/her life time and also subject to other conditions prescribed by the Government for such compassionate appointment being fully satisfied. It is clear that the intention of the Government is to prevent the persons who are adopted after the death of the Government servant to claim employment on compassionate ground. In the case on hand, it is not in dispute that the adoption had taken place even during the life time of the deceased employee, viz., C. Balan and in fact he nominated his adopted son, viz., petitioner herein, for all his service benefits. In such circumstances, the rejection on the ground that the petitioner is only a adopted son cannot be sustained, since the Board's proceedings runs counter to the Government Order referred to above.

10. Mr. V. Prakash, learned senior counsel for the petitioner has brought to our notice a Division Bench decision of Patna High Court in the case of Kamal Ranjan vs. State of Bihar (1995 Labour and Industrial Cases 2562). The question before the Division Bench of the Patna High Court is, whether an adopted son of the deceased Government servant dying in harness in the service of the State of Bihar is entitled to appointment on compassionate ground? The Division Bench, after referring Section 12 of the Hind Adoption and Maintenance Act, 1956 (in short, 'the Act'), which provision confers upon the adopted child, the same rights and privileges in the adoptive family as the legitimate natural born son or daughter for all purposes has concluded,

> " 5. It is, thus, difficult to accept the plea of the respondents that an adopted son or daughter of a deceased Government employee dying in harness is not entitled to appointment on compassionate ground. Any stipulation to the contrary as contained in the circulars of the Personnel and Administrative Reforms Department dated 15.10.1991 must be held to illegal and arbitrary. It need hardly be emphasised that the provision of the Hindu Adoption and Maintenance Act cannot be superseded, nullified or modified in any manner by the State, much less by way of executive circulars."

In view of the language used in Section 12 of the Act, we are in respectful agreement with the said view. However, as rightly pointed out, the burden is on the person, who make such claim and substantiate that his or her adoption was valid in law. This would, of course, require proper enquiry. We make it clear that if proper care is not taken to scrutinize the claims, there may be possibility of spurious claimants getting jobs frustrating the object of compassionate appointment. As said earlier, in the case on hand, the petitioner was adopted during the life time of C. Balan and in fact the Board recognised him and sanctioned family pension, since he is the only surviving heir of said Balan. In view of the same, we are unable to accept the rejection of petitioner's claim on the second ground also.

11. We are concise of the fact that for compassionate appointment, no one has vested right and it depends upon various factors as provided

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in the Scheme, more particularly, economical condition and indigence of the family of the deceased Government servant. It is seen from the particulars furnished by the petitioner that on the date of death of C. Balan, the petitioner was a minor. We have already referred to the Board's proceedings, taking away the limitation prescribed for making an application for appointment under compassionate ground as well as the Government Order enabling the adopted son to apply for employment on compassionate ground, if he satisfies other conditions if any. We also referred to the fact that except the petitioner, and his illiterate natural mother, no one is available in his family. In those circumstances and in view of the discussion and ultimate conclusion by us, the impugned order of the Superintending Engineer, Ennore Thermal Power Station, Chennai-57 dated 17.07.2002, is quashed and the order of the learned single Judge dated 24.11.2003 made in W.P.No.33977 of 2003, is set aside. It is made clear that we have held that the petitioner is eligible to be considered and we have not expressed anything on the merits of his claim and it is for the appropriate authority to consider and pass orders regarding his claim for employment on compassionate ground within a period of eight weeks from the date of receipt of a copy of this order.

The writ appeal is allowed on the above terms. No costs.

kh

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1.The Chairman
Tamil Nadu Electricity Board
Anna Salai, Chennai 600 002.

2.The Chief Engineer (Personnel)
Tamil Nadu Electricity Board
Chennai 600 002.

3.The Superintending Officer
(Purchase & Administration)
E.T.P.S. Chennai 600 057.

+ One cc to Mr. R. Vaidyanathan Advocate SR 674
+ One cc to Mr. S.N. Ravichandran Advocae SR 6578

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P.D. Judgment in
W.A.No.3883 of 2004

Dated:05.02.2007

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